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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re S.H., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B236724
(Super. Ct. No. J1395292)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

R.H.,

Defendant and Appellant.

R.H. (Mother) appeals the jurisdictional findings and dispositional orders regarding her daughter S.H. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 28, 2011, three-year-old S.H. arrived at preschool with a bruised ear, a one-half-inch scratch on her face, and a small section of hair missing from her head. S.H. informed her teacher that "Matt" caused her injuries. The preschool teacher reported S.H.'s condition and Santa Barbara County Child Welfare Services (CWS) commenced an investigation.

S.H. lived with Mother, her maternal grandmother, and Mother's boyfriend Matt P. (boyfriend). S.H.'s father, H.H., (Father) lived with his parents and his girlfriend. S.H. spent part of Fridays and Saturdays with Father and his parents.

CWS had received previous reports of S.H.'s bruises, and had investigated and dismissed the reports as unfounded. S.H. also had reported earlier to her teacher that Mother's boyfriend had struck her.

CWS social worker Holly Morris observed and interviewed S.H. at the preschool. She saw that S.H.'s earlobe was red and purple and that she had two bruises behind her ear. When Morris inquired about the injury, S.H. responded that "[m]y Matt did it," and demonstrated by pretending to hit her head with a closed fist.

Morris later interviewed Mother who denied that her boyfriend injured her daughter. Mother stated that "[m]aybe [S.H.] hit herself or something" or that she became injured while in Father's care that weekend. Mother also stated that S.H. fabricated stories.

S.H.'s paternal grandmother informed Morris that she did not notice any bruises on S.H. the previous Friday and Saturday and that she did not think S.H. injured herself during the visit with Father.

On March 1, 2011, Doctor Anna Kokotovic conducted a videotaped interview of S.H. Kokotovic, a licensed psychologist, had been the former executive director of the Child Abuse and Listening Mediation Center for 18 years. S.H. stated that Mother's boyfriend hit her and "hurt" her hair, causing her to wet the bed. She also stated that the boyfriend forced her to eat her feces. S.H. demonstrated how she was struck and how her hair was pulled.

On March 2, 2011, CWS filed a dependency petition alleging that S.H. suffered serious physical harm inflicted by a parent and that her parent failed to protect her. (Welf. & Inst. Code, § 300, subds. (a) & (b).)¹ CWS also alleged that Mother is a

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

felony probationer and has a criminal history of theft and burglary crimes. On March 3, 2011, the juvenile court detained S.H., ordered CWS to place her with Father, and ordered that Mother receive supervised visitation. The court also set a jurisdiction hearing which eventually was held as a contested matter.

In the interim, CWS and police officers conducted additional investigation. K.P., the boyfriend's nearly five-year-old son with M.S., informed his mother that his father struck S.H. M.S. informed CWS and Santa Maria Police Detective William Jackson interviewed K.P. During the interview, K.P. stated that he saw his father strike S.H. on the head and in the stomach and that she wet her bed. K.P. also stated that his father laughed at S.H. and called her profane names, e.g., "bitch," "fucker," and "biatch."

Social worker Morris spoke to S.H.'s preschool teacher again and learned that S.H. was missing a patch of hair at the same time she had a black eye in November 2010. Father informed Morris that Mother explained the black eye as an injury S.H. suffered when she ran into a door knob. The preschool teacher also reported that S.H. made spontaneous statements regarding her abuse.

In a meeting with CWS, Mother explained S.H.'s hair loss as alopecia and stated that she had reported it months earlier to S.H.'s physician.

On March 29, 2011, CWS filed an amended dependency petition, adding allegations that S.H. came within the provisions of section 300, subdivisions (c) [serious emotional damage] and (i) [cruelty]. CWS also alleged that Father has a lengthy criminal history of drug and theft crimes, among other offenses, and that he is on felony probation.

On May 23, 2011, CWS provided the juvenile court with copies of Santa Maria police investigation reports regarding the matter. A report stated that Mother informed the preschool teacher that S.H.'s injuries resulted from her hitting her head on the bed. Another report stated that medical personnel at the hospital determined that S.H. suffered from deep bruising and a contusion to her right ear and skull. At the hospital, S.H. stated to nurses, the social worker, and two police officers that "[m]y Matt hurt me"

and she demonstrated being struck in the right ear. Police officers took photographs of S.H.'s injuries.

Mother informed Detective Jackson that she first noticed S.H.'s injuries on Sunday morning and that the child had wet her bed on Saturday night. Jackson also interviewed Mother's boyfriend, who denied abusing S.H. and nearly broke "into a run while heading for the door." Police officers later arrested the boyfriend who was also a Nevada parolee with an outstanding Colorado arrest warrant. In March 2011, Mother and the boyfriend married.

Doctor Kokotovic also interviewed five-year-old K.P., who stated that he was present in the bedroom when his father "punched" S.H. K.P. stated that S.H. then vomited on her bed. K.P. reported that his father addressed S.H. profanely and that he hit her when she wet herself.

Detective Jackson spoke with a former girlfriend of Mother's boyfriend, who stated that the boyfriend physically abused her daughter for many years in Colorado. Jackson also spoke with the daughter, now 15 years old, who confirmed that she was frequently beaten by Mother's boyfriend and would defecate or wet herself in fear.

On July 13, 2011, the juvenile court commenced the first day of a contested jurisdiction hearing. Over five non-consecutive days, the court received evidence of CWS reports and addenda, testimony from Mother, S.H.'s therapist, the maternal grandmother, social worker Joann Hutson, Detective Jackson, and other witnesses, videotapes of Doctor Kokotovic's interviews with S.H. and K.P., and color photographs of S.H.'s injuries. At the conclusion of the evidence and argument by the parties, the court determined that S.H. suffered an injury that was "not insignificant" and that Mother's boyfriend inflicted the injury. The court found insignificant evidence that S.H. was compelled to eat feces and it struck allegations referring to those acts as well as the allegation regarding infliction of serious emotional injury. (§ 300, subd. (c).) It otherwise sustained allegations pursuant to section 300, subdivisions (a), (b), and (i).

Prior to the juvenile court's ruling, CWS removed S.H. from Father due to his continuing drug abuse and failure to comply with probation terms. The court detained S.H., ordered that Mother and Father receive family reunification services, and ordered S.H. placed with her paternal grandparents.

Mother appeals and contends that 1) the hearsay statements of S.H. and K.P. are not established to be sufficiently reliable and were not sufficiently corroborated by other evidence, and 2) there is insufficient evidence to sustain jurisdiction pursuant to section 300, subdivision (a) because Mother's boyfriend is not S.H.'s "parent or guardian."

DISCUSSION

I.

Mother argues that S.H. and K.P. were not competent witnesses and their hearsay statements are not sufficiently reliable to be the basis for juvenile court jurisdiction. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1247-1248 [out-of-court statements of dependent child who lacks competence to testify may not be relied on exclusively to establish jurisdiction unless court finds that the statements are reliable].) She points out that she objected to the children's statements based on their lack of competence to testify, but that the juvenile court overruled her objections. Mother relies on Doctor Kokotovic's opinion that S.H. appeared delayed in her language skills, that K.P. lied concerning whether he had a pet dog and that he stated he was five years old, but at the time of the interview, he was only four years nine months old. She adds that K.P. discussed robots and vampires when describing the incident.

For several reasons, we reject Mother's arguments.

First, Mother did not specifically object to the children's' statements as inadmissible hearsay evidence. (Evid. Code, § 353, subd. (a) [failure to object waives the issue].) "It is well settled that hearsay or other incompetent evidence . . . if received without proper objection or motion to strike is to be regarded as competent evidence in support of an order or judgment." (*Flood v. Simpson* (1975) 45 Cal.App.3d 644, 649.)

Second, the juvenile court did not abuse its discretion by finding that S.H. and K.P. understood the difference between the truth and lies, and therefore were competent to testify. (*In re Lucero L.*, *supra*, 22 Cal.4th 1227, 1231 [incompetent witness is one who has inability to understand the obligation to tell the truth and distinguish truth and falsehood].) Doctor Kokotovic testified that she discussed truth and falsehood with S.H. and K.P. and that they understood the difference between them; the transcript of her interviews with the children support her opinion. The trial court reviewed the interviews and found the children were competent witnesses. We do not substitute our views for those of the trial court. (*People v. Montoya* (2007) 149 Cal.App.4th 1139, 1150 [witness's competency to testify is determined exclusively by trial court].) "'The party challenging the witness bears the burden of proving disqualification, and a trial court's determination will be upheld in the absence of a clear abuse of discretion.'" (*People v. Dennis* (1998) 17 Cal.4th 468, 525.)

Third, the children's statements possess sufficient indicia of reliability and are corroborated by independent evidence. S.H. and K.P. consistently stated that Mother's boyfriend struck S.H. (*In re Lucero L.*, *supra*, 22 Cal.4th 1227, 1250 [child consistently informed adults that she had been molested by a particular person].) Although K.P. added fantasies concerning robots and vampires, his statement that his father struck S.H. did not change. CWS also introduced corroborating evidence of color photographs of S.H.'s bruises, the hospital report of her injuries, and Detective Jackson's interview of another child-victim of Mother's boyfriend. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 405, superseded by statute on other grounds as stated in *People v. Britt* (2002) 104 Cal.App.4th 500, 505.) The juvenile court did not err by allowing evidence of the children's statements.

II.

Mother contends that the juvenile court erred by sustaining the allegations pursuant to section 300, subdivision (a) because that subdivision applies to infliction of serious physical harm by a "parent or guardian." (*Ibid.* ["The child has suffered, or there

is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian"].) She points out that Matt P. was her boyfriend and is now her husband and S.H.'s stepparent.

Although Mother casts her argument as one of insufficient evidence, she is in effect arguing the legal sufficiency of the allegation because there is no evidence that Matt P. is S.H.'s "parent or guardian." Mother has forfeited this issue on appeal because she did not object to the legal sufficiency of the section 300, subdivision (a) allegation in the juvenile court. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 82.) Moreover, dependency jurisdiction may rest upon a single ground. (*Id.* at p. 83.) Here the juvenile court found, with sufficient evidentiary supports, jurisdiction pursuant to section 300, subdivisions (b) and (i).

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Toni Lorien, Deputy, Sarah A. McElhinney, Deputy, for Plaintiff and Respondent.